The constitution of Virginia provided that voters must have been twelve months "householders and heads of families." It was held that unmarried persons living with their mother or with younger brothers and sisters, having charge of the family, the father being absent or dead, are to be deemed "housekeepers and heads of families." And it was held further that where a man and woman were living together as husband and wife, it was not competent to inquire into the legality of the marriage, the man then being at the head of a family and a housekeeper: *Draper* v. *Johnson*, 1 Cl. & H. 702.

W. W. THORNTON.

ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS OF COMMON LAW AND EQUITY.[1]

SUPREME COURT OF KANSAS.[2]

COURT OF ERRORS AND APPEALS OF MARYLAND.[3]

COURT OF CHANCERY OF NEW JERSEY.[4]

SUPREME COURT OF VERMONT.[5]

SUPREME COURT OF WISCONSIN.[6]

ADMIRALTY.

Collision—Contributory Negligence—Damages.—A dumb barge, by the negligent navigation of those in charge of her, was suffered to come in contact with a schooner moored to a mooring buoy in the river Thames. The schooner had her anchor hanging over her bow with the stock above water, contrary to the Thames bye-laws. The anchor made a hole in the barge, and caused damage to her cargo. But for the improper position of the anchor, neither the barge nor her cargo would have received any damage. In an action of damage by the owners of the barge against the schooner, *Held*, that both vessels were to blame, and that, therefore, the owners of the barge were entitled to half the damage sustained: *The Margaret*, L. R. 6 Prob. Div.

AMENDMENT.

Allowance of on Trial.—Where the original complaint, for work and labor, implied but did not expressly allege a special contract, and the answer set up a special contract, and alleged non-performance, an

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[1] Selected from the last numbers of the Law Reports.

[2] From A. M. F. Randolph, Esq., Reporter; to appear in 26 Kansas Reports.

[3] From J. Shaaff Stockett, Esq., Reporter; to appear in 55 Maryland Reports.

[4] From Hon. John H. Stewart, Reporter; to appear in 34 N. J. Eq. Reports.

[5] From Edwin F. Palmer, Esq., Reporter; to appear in 53 Vermont Reports.

[6] From Hon. O. M. Conover, Reporter; to appear in 52 Wis. Reports.

amendment of the complaint at the trial so as to set up such contract was not improperly allowed, though perhaps immaterial; and where the amendment was made orally, and not formally filed, but was taken down by the reporter, treated at the trial as made, and incorporated into the record on appeal by bill of exceptions, it is treated here as an effectual amendment to support the verdict and judgment: *Kretser* v. *Cary*, 52 Wis.

ASSUMPSIT. See *Voluntary Payment.*

ATTORNEY.

Refusal by Town Agent of Solicitor to pay to Lay Client amount of Debt received in an Action—Summary Jurisdiction of the Court over its own Officer.—The town agent of the solicitor of the plaintiff in an action, in which judgment had been recovered for a debt of 33*l.* 5*s.* and costs, refused to pay over to the plaintiff the amount of the debt which had been received by him from the sheriff under a writ of *fi. fa.*, on the ground, that he was entitled to retain such amount for a debt due to him from the country solicitor of equal amount. The country solicitor had no lien on such amount against his client, the plaintiff. *Held*, that the court, in the exercise of its summary jurisdiction over its own officers, would order the town agent to pay over the amount of the debt to the plaintiff: *Ex parte Edwards*, L. R., 7 Q. B. Div.

BANK.

Action on Bank Note—Erasure of Number—Material Alteration.—In an action against the Bank of England for non-payment of notes payable to bearer issued by them, it appeared that the notes had been *bona fide* purchased by the plaintiff for value, but that they had been fraudulently obtained by the person from whom he purchased them; and that before they were in the custody of the plaintiff, they had been altered, by erasing the numbers upon them and substituting others, with the object of preventing the notes from being traced. *Held*, that the alteration was not material in the sense of affecting the plaintiff's right of action on the notes, and that the defendants were liable: *Suffell* v. *Bank of England*, L. R., 7 Q. B. Div.

COLLISION. See *Admiralty.*

COSTS.

In Equity—Defendants Severing in their Answers.—Where defendants, in good faith, sever in their answers, each one may be allowed his costs, although they all may have employed the same solicitor: *Putnam* v. *Clark et al.*, 34 N. J. Eq.

Practice in Equity—Costs—Appearance Fees.—The question of costs is a matter within the discretion of the court below. A decree, in other respects right, will not be disturbed, even if there was an improper direction as to the party or fund charged with the payment of costs: *Dodge et al.* v. *Stanhope et al.*, 55 Md.

Appearance fees should not be allowed on exceptions to an auditor's accounts, or other collateral proceedings in chancery upon petition: *Id.*

Criminal Law.

Larceny in Railroad Car moving from one County to another.—Where one enters a moving car in one county, with intent to commit a larceny in such car, and with the same intent continues in the car until it passes into another county, and there commits the intended larceny, there is in law a fresh entry in the latter county, and the offence is indictable therein under the statute: *Powell et al.* v. *The State*, 52 Wis.

Murder—Premeditation—Reasonable Doubt.—While a premeditated, deliberate intent to take life is essential to the crime of murder in the first degree, yet, if a party goes to have an interview with another, having armed himself with a deadly weapon, with the intent to compel such other to do any certain thing, or upon his refusal to kill him, such conditional intent to take life is sufficient to make the homicide, if committed, murder in the first degree: *State* v. *Kearly*, 26 Kans.

The court, in attempting to define reasonable doubt, said: That to exclude such doubt, the evidence must be such as to produce in the minds of prudent men such certainty, that they would *act* on the conviction without hesitation, in their own most important affairs. *Held*, that such definition and explanation did not narrow the import of the term "reasonable doubt," to the prejudice of the substantial rights of the defendant: *Id.*

Writ of Error on Judgment Quashing an Indictment—Indictment for Receiving Stolen Goods—Common Law Offence.—A writ of error lies on a judgment quashing an indictment on demurrer, such judgment being a final judgment: *State of Maryland* v. *Hodges*, 55 Md.

The offence of receiving stolen goods is in Maryland, a misdemeanor. In such a case, it is not necessary to allege in the indictment that the property in question was feloniously received; nor need such indictment charge, that the traverser received the stolen goods for the purpose of converting them to his own use: *Id.*

It is not necessary that the receiving should be *lucri causa*. If one receives stolen goods knowing them to be stolen, for the mere purpose of concealment, without deriving any profit at all, or merely to assist or aid the thief, such a receiving is within the statute: *Id.*

But an indictment for receiving stolen goods, a common-law offence, should charge that the same were unlawfully received: *Id.*

Where one is charged with a common-law offence, the mere averment that it was done *contra pacem*, does not dispense with the necessity of setting out in proper terms, the circumstances necessary to constitute the alleged common-law offence: *Id.*

Debtor and Creditor. See *Husband and Wife.*

Distribution of Assets under a Deed of Trust.—The prosecution of claims to judgment, cannot diminish the rights of a creditor in a court of equity, who applies for a distributive share of the proceeds from the debtor's property sold under a deed in trust: *Dodge et al.* v. *Stanhope et al.*, 55 Md.

Settlement of Accounts—Fraud on Other Creditors.—A settlement of their accounts deliberately made by two persons, without any intention to defraud a creditor of one of them, will not be set aside in favor of such creditor, without at least the clearest and most positive proof

of fraud or mistake, as between the parties to such settlement: *Klauber* v. *Wright, Garnishee,* 52 Wis.

DEED. See *Equity.*

EQUITY.

Reformation of Deed—Absence of Mutual Mistake or Fraud.—A policy of insurance was issued to and in the name of the complainant's wife, on his property, upon her application. Complainant alleged that the policy was taken out by her in her own name instead of his, by mistake on her part. Reformation after loss refused, on the ground that there was no proof of mutual mistake, nor of fraud on the part of the company: *Doniol* v. *Commercial Fire Ins. Co.*, 34 N. J. Eq.

ESTOPPEL. See *Husband and Wife.*

Grantee taking subject to Mortgage Estopped from acquiring Title under Tax Levy caused by his Default—Notice of such Title.—A purchaser of real estate subject to a mortgage and in possession thereof, and under duty to pay the taxes, for which a tax-deed was afterwards given upon the premises, cannot acquire title thereto by purchase from the holder of the tax-deed: *Leppo* v. *Gilbert & Gay*, 26 Kans.

The title so acquired would be void in the hands of a subsequent purchaser, without other notice than the record of the mortgage, and the record of the conveyances to his grantor, and the possession of the premises by such grantor: *Id.*

EVIDENCE.

Declarations by Grantor subsequent to Deed.—Declarations of a grantor in a deed or bill of sale, impairing the rights of those claiming under the instrument, made subsequent to its execution, by which declarations, claims barred by the Statute of Limitations would be revived, are inadmissible against the grantee and those claiming under it: *Dodge* v. *Stanhope*, 55 Md.

FENCE.

Built on Land of Another.—Where a fence is built, as a permanent structure, by one person upon the land of another, without any agreement between the parties as to a right of removal, it becomes a part of the realty; and the owner of the land may remove it and dispose of the material at his pleasure. This rule applies to rails laid into a fence, though not attached to the land otherwise than by their weight; and it is not affected by the fact, that the person who built the fence believed that he was erecting it on his own land: *Kimball* v. *Adams et al.*, 52 Wis.

FIXTURE. See *Fence.*

Wooden Building detached from House.—The complaint alleged among other things, that plaintiff was the owner and in possession of certain lands, and that defendant entered thereon and carried away and converted to his own use, a certain building situate thereon, &c. The answer set up, that defendant was sheriff, and as such, levied upon and took into his custody said building, by virtue of an execution against plaintiff. On the land described in the complaint, was a house occupied

by plaintiff and family as a residence, and used also as a saloon. On one side of this main building, and next to the saloon, a wooden structure, thirty-two feet square, was erected by plaintiff, to be used in connection with the saloon as a dancing-hall. The sills were fastened together at the ends with nails or spikes; the studding was fastened to the sills in the same way, and four or five feet apart; the plates were fastened in like manner at the top of the studding; the sills and plates were thirty-two feet long, of two by eight or two by ten timber; the sills rested at some places on the ground, at others on cedar posts set into the ground, and on cedar railroad ties, and stones; a floor was laid over the whole space, in the centre of which stood a post eight feet high, of six by eight timber, from the top of which four rafters extended to the plates; and the roof was of brush. In a space between the buildings were constructed seats for musicians, twelve feet long, upon cross-pieces fastened to both buildings; and a door was intended to open from the saloon into the dancing-hall. The attached building was unfinished, but was used for the purpose intended, and was designed to be made more complete and permanent, and to be permanently used in connection with the main building, for domestic purposes and as a dancing-hall. *Held*, that upon the facts, the court below did not err in instructing the jury, that such attached building was a part of the realty: *Lipsky* v. *Borgman*, 52 Wis.

Highway.

Injury on Highway—Contributory Negligence—Burden of Proof.—The insufficiency of the highway must be the sole, operative cause of the injury. If it is the joint product of the plaintiff's lack of prudence, and the town's negligence, there can be no recovery: *Bovee and Wife* v. *Town of Danville*, 53 Vt.

The burden of proof is upon the plaintiff to show, that he contributed nothing towards producing the accident; that the highway was insufficient; and that his conduct was prudent: *Id.*

The plaintiff wife was prematurely delivered of twin living children; and the miscarriage was the result of her injuries. Any physical or mental suffering attending the miscarriage, is a proper subject of compensation. But the rule goes no farther. Any injured "feelings" *following* the miscarriage, not part of the pain naturally attending it, are too remote to be considered an element of damage.

Homestead.

Husband cannot Lease without Wife's Consent.—The husband cannot, without the consent of the wife, execute a lease of a homestead, and give possession thereof to a tenant, although the title to the premises is in his own name, when the lease interferes with the possession and enjoyment of the premises by the wife as a homestead: *Coughlen* v. *Coughlen*, 26 Kans.

Husband and Wife. See *Homestead.*

Payment of Debts between—Fraud on Creditors.—Moneys given by a married woman to her husband in 1855, and for which she received no evidence or security until 1877, when he had become insolvent: *Held*, not to sustain, under the circumstances, as against his existing

creditors, a transfer of property to her in 1877, but as to them to be fraudulent: *Luers et al.* v *Brunjes et ux.*, 34 N. J. Eq.

Insolvent Law not applicable to a Married Woman.—The insolvent law of Maryland contained in Art. 48 of the Code, and in previous acts, does not embrace the case of a married woman as an insolvent debtor; nor do the acts subsequent to the Code, making special provision for enabling married women to contract, and for recoveries against them at law, extend the provisions, or affect the construction of the insolvent law in the Code: *Relief Building Association* v. *Schmidt*, 55 Md.

Married Woman's Covenant—She is not bound by it in Joining in Deed with Husband—Estoppel.—The principle of law, that whatever interest or title the grantor acquires in the granted premises, subsequently to the execution of the deed, he having conveyed with covenants of warranty of title, enures for the benefit of the grantee, does not apply to a married woman, joining in a deed with her husband: *Goodenough* v. *Fellows*, 53 Vt.

Hence a married woman is not estopped from foreclosing a mortgage, acquired by inheritance, against one holding a subsequent mortgage, on the same premises, given by her husband, and she joining with him: *Id.*

She is not liable in damages for the breach of her covenant: *Id.*

Not considered what might be held in equity, respecting an after-acquired title of the *separate* real estate of the wife, which she had once conveyed for a full consideration with a general covenant of warranty: *Id.*

INJUNCTION.

To Prevent the Erection of Obstructions on a Strip of Ground alleged to be a Public Way—Agreement for the Use of Strip of Ground.—If, by reason of obstructions erected on a strip of ground alleged to be a public way, the applicant for an injunction for their abatement, claiming the use of the strip of ground as one of the public, and negativing by the allegations of his bill and his testimony, all mere private right in it, were obstructed or deprived of reasonable access to his buildings on his lot, and thereby subjected to loss and inconvenience, that would be such special and particular injury as would entitle him (if the allegations were well founded in fact), to remedy from a court of equity. But the applicant for such an injunction, and the purchaser of the strip of ground having contracted with each other in respect to its use, and the manner of user, on failure of compliance, the remedy would be on the agreement: *Gore* v. *Brubaker*, 55 Md.

INSOLVENT. See *Husband and Wife.*

INSURANCE.

Statement of Loss must be Sworn to by Owner of Property—Married Women—Waiver.—The statement of the property destroyed must be sworn to by the owner, if so required by the by-laws of the company. When a married woman is the owner of the property insured, it is not sufficient that the statement is sworn to by her husband: *Spooner* v. *Vermont Mutual Fire Ins. Co.*, 53 Vt.

The insurance company did not waive the defects in the statement by proceeding to a determination of the plaintiff's claim, it not appearing on what ground the claim was rejected: *Id.*

JURY. See *Vendor and Purchaser.*

LIMITATIONS, STATUTE OF.

Bar of, Extinguishes the Debt—Revival by Express Promise in Writing.—It is the settled doctrine in Wisconsin, that when the Statute of Limitations has run against a debt, the debt is extinguished, and that the bar of the statute is not removed by any mere admission of legal liability, but only by an unqualified promise to pay; and under sect. 37, c. 138, R. S. 1858 (sect. 4243, R. S. 1878), such promise must be in writing, signed by the alleged debtor: *Pierce* v. *Seymour*, 52 Wis.

MORTGAGE.

Mortgagee may purchase Equity of Redemption.—There is no legal inhibition on a mortgagor selling the mortgaged property to the mortgagee, in satisfaction of his debt; and where such a sale appears, and nothing unfair or unreasonable in its circumstances or conditions is shown by the party challenging it, it will be upheld, notwithstanding the ancient maxim "once a mortgage, always a mortgage:" *Amos* v. *Livingston*, 26 Kans.

Deed with Clause of Redemption.—A deed of lands, accompanied by a lease thereof to the grantor, containing a clause for redeeming the lands, by paying a certain amount within a specified time, is a mortgage, and not defeated by the grantor's failure to make a tender within the time limited, although the grantee took possession of the premises at the expiration of the lease. The time for making such tender may be extended by parol: *Vliet* v. *Young*, 34 N. J. Eq.

NEGLIGENCE. See *Highway*

PILOT. See *Shipping.*

POSSESSION. See *Way.*

REAL AND PERSONAL PROPERTY. See *Fence; Fixture.*

REPLEVIN.

Remedies of Defendant where Plaintiff suffers Voluntary Dismissal of Suit.—While the defendant in a replevin action has a right, notwithstanding dismissal by the plaintiff, to an inquiry and adjudication in that action of his claims to, and interest in, the property replevied, and in case he avails himself of this right, can collect no more from the sureties on plaintiff's bond than is awarded by such adjudication; yet this is not his only remedy, for, after a voluntary dismissal by the plaintiff, he may commence an independent action on the bond and recover therein all his damages sustained by the taking of the property, including therein, if the title be in him, the value of such property: *Manning* v. *Manning*, 26 Kans.

SURETY.

Securities given to Indemnify—Subrogation of Creditor.—The oratrix was the ward of the defendant Morrill, and he executed the mortgage in question to defendant Bates, to secure him for having signed his guardianship bond. The mortgage was defectively executed, having been witnessed by the wife of the mortgagee. It was recorded; and the defendant bank had notice, in fact, of such mortgage, before the levy of its execution. In a petition to foreclose the mortgage, *Held*, That the oratrix, being the beneficiary under the bond, is entitled to have the mortgage stand as a security to her for what is due from her guardian; and, to a decree of foreclosure. *Morrill* v. *Morrill et al.*, 53 Vt.

When an assignment of securities is made by the principal to the surety for indemnity merely, an implied trust is raised in favor of the creditor, which he may enforce, on the maturity of his debt, whether the surety has been damnified or not, and whether the surety or principal, either or both, are insolvent: *Id.*

VENDOR AND PURCHASER.

Goods ordered from Manufacturer for specific and known Purpose—Implied Warranty of reasonable fitness for such purpose—Jury—Use of Knowledge not gained by Evidence in the Case.—When a machine is ordered from a manufacturer for a specific and understood purpose, it is impliedly agreed that such machine when constructed shall be reasonably fit for such purpose, and if, upon trial within a reasonable time, it proves unfit, the purchaser may return the machine and rescind the contract. Mere receipt of the machine is not such an acceptance thereof as debars the purchaser from this right, neither is this right destroyed by the fact that in the contract for the machine the manufacturer, in writing, agreed that it should be well made, of good material, and that with proper management it would do the work intended: *Craver* v. *Hornburg*, 26 Kans.

Where the question is whether the machine purchased as above failed through defect in its construction or in consequence of mismanagement, and the question is, by the testimony, a doubtful one, it is material error for the court to permit testimony that some other machine furnished by the same manufacturer similarly failed: *Id.*

While the jury have a right in making up their verdict to use their general knowledge such as any man may bring to the subject, yet beyond that, they must be guided by the testimony, and may not resort to any knowledge which they may have by reason of their familiarity with any special business or occupation; *Id.*

VOLUNTARY PAYMENT.

Compulsion by Legal Process—The payment of a demand under compulsion of legal process, accompanied by a protest that the demand is illegal, and that the payer intends to take measures to recover back the money paid, is not a voluntary payment; and to constitute compulsion of legal process, it is not necessary that the officer have seized or be *immediately* about to seize property of the payer by virtue of the process, but it is sufficient if he demands payment by virtue thereof and manifests an intention to enforce collection by seizure and sale of the payer's property at any time: *Parcher* v. *Murathon County*, 52 Wis.